
DISTRICT ATTORNEY'S OFFICE

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**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CRIMINAL SECTION TRIAL DIVISION**

COMMONWEALTH :
v. : CP-51-CR-0001677-2011
DONTA REGUSTORS :

**COMMONWEALTH'S ANSWER TO POST CONVICTION RELIEF ACT
PETITION**

TO THE HONORABLE GLENN BRONSON:

LAWRENCE KRASNER, the District Attorney of Philadelphia County, by his assistants, Michael Garmisa, Assistant District Attorney, and Rebecca McDonald, Assistant District Attorney, answer that Donta Regusters¹ ("Regusters") is entitled

¹ The Commonwealth understands that Petitioner's name is misspelled as "Donta Regusters" in numerous locations, including in the trial court record and in the caption of this case. Acknowledging these errors, the Commonwealth uses the correct spelling of his name—Donta Regusters—in its

to relief on the *Brady* claims enumerated in his counseled Petition for Post-Conviction Relief.

PROCEDURAL HISTORY AND INTRODUCTION

1. On April 2, 2012, a jury sitting before this Court found Regusters guilty of the first-degree murder of Johnathan Wilson (“Wilson”), the attempted murders of Charles Britten (“Britten”) and Edward Humphrey (“Humphrey”), and related offenses, in connection with the August 28, 2010 shooting near 26th and West Silver Streets.² The Court imposed the mandatory sentence of life imprisonment, along with two consecutive sentences of eight to sixteen years of incarceration for the attempted murders of Britten and Humphrey, and a concurrent term of years for criminal conspiracy.

2. Regusters filed a direct appeal, which was denied by the Superior Court on November 13, 2013 at No. 3113 EDA 2012. His right to seek allocatur expired on December 12, 2013, without any filings.

3. On November 12, 2014, Regusters then filed a Post Conviction Relief Act (“PCRA”) petition raising claims of ineffective assistance of counsel, which was dismissed on June 1, 2015. At the time, the rule announced in *Commonwealth v. Grant*, 572 Pa. 48 (2002) governed ineffective assistance of counsel claims, and

answer.

² Regusters was tried jointly with his co-defendant Kyle Pelzer for this incident, as well as a separate non-fatal shooting of John Jones and Kenneth Richardson that occurred on August 16, 2010, CP-51-CR-0001666-2011. Regusters was acquitted of the August 16, 2010 non-fatal shooting. Pelzer was acquitted of all charges.

prohibited Regusters from raising his claim sooner. Regusters' first PCRA was therefore his "one and only appeal' as to an ineffective-assistance of counsel claim," and thus, still part of his direct appeal for purposes of equitable relief. *See generally Martinez v. Ryan*, 566 U.S. 1, 8-9 (2012). The Superior Court affirmed the dismissal on February 22, 2017, at No. 2023 EDA 2015.

4. On July 16, 2021, Regusters filed the instant PCRA petition, with subsequent amendments filed on November 22, 2022 and May 25, 2023. The petition raises claims relating to the misconduct of former Philadelphia Police Department Detective Philip Nordo ("Nordo").

5. To prove Regusters' guilt at trial, the Commonwealth relied upon the out-of-court statements of Britten and Humphrey obtained by Nordo, which identified Regusters as a shooter. Under oath, both witnesses recanted, explaining that their statements were not true and were the product of promises by law enforcement. As a result, Nordo's testimony was required to admit the recanted statements and statements of identification as substantive evidence pursuant to Rule 803.1 and *Brady/Lively*, as it established the evidentiary prerequisites, as well as a substantive basis for the jury to credit them.

6. Utilizing these recanted statements, the Commonwealth advanced the following theory of the case. On August 28, 2010, at approximately 4:00 am, Britten and Humphrey were standing together on the sidewalk of West Silver, near 26th street. Wilson was nearby on 26th Street, making phone calls from his parked car. Soon thereafter, Regusters and Kyle Pelzer ("Pelzer") (aka "Kizzy") rode down 26th

Street on bicycles and began shooting at Britten and Humphrey. Britten and Humphrey ducked behind cars, and Britten returned fire using a .380 handgun. Neither Regusters, Pelzer, Britten, nor Humphrey sustained injuries. Wilson was shot once in back with a 9mm bullet during the exchange. Wilson drove away, but soon lost control of the vehicle and crashed into a pole on Sterner Street, west of 26th street. Wilson died from his injuries.

7. The Commonwealth now agrees the Petitioner is entitled to a new trial, because of Nordo's misconduct and the specific facts of this case, which form a nexus between that misconduct and Regusters' trial.

THE CRIMINAL INVESTIGATION

8. Shortly after 4:00am on August 28, 2010, police responded to reports of gunshots near 26th and Sterner Streets. Upon arrival, police discovered a tan Ford crashed into a telephone pole on Sterner Street with Wilson bleeding and unconscious in the driver's seat of the car. He was transported to Temple Hospital, where he was pronounced dead at 4:42am.

9. Police found ballistic evidence in two distinct areas, identified as the primary and secondary scenes. Closest to Wilson was the primary scene. Here, ballistic evidence was recovered along the sidewalk of West Silver onto 26th, and continuing east on Sterner Street, essentially wrapping the block. From this location, police recovered seventeen 9mm fired cartridge casings ("FCC"), one .380 FCC, one 9mm live round, and one projectile. Ballistics testing indicated the presence of at least

three firearms: the 9mm FCCs came from two different firearms (identified as “Group A” and “Group B”), while the .380 FCC came from a third.

10. The secondary scene was located a little more than a block and a half northeast at 25th and Somerset Streets, where police recovered seven .380 FCCs, six 9mm FCCs, and one 9mm live round. Ballistics testing indicated that the 9mm FCCs from the secondary scene were fired from the same firearm as the Group B FCCs from the primary scene. The seven .380 FCCs bore insufficient markings for comparison to each other, or to the .380 FCC from the primary scene.

11. No firearms were ever recovered, and no other victims were identified at the scene.

12. Homicide Detective Angela Gaines was the assigned detective, with both former-Detective Ronald Dove (“Dove”) and former-Detective Philip Nordo (“Nordo”) taking significant investigative acts to advance the case.

13. Two hours after Wilson was shot, Northwest Detective Division (“NWDD”) received two anonymous calls providing information that made Regusters a suspect. During the first call at 6:20 am, the anonymous caller stated that a male named “Dante” who lived in a home with an enclosed porch on 25th near Somerset committed the homicide at 2600 Sterner.

14. A person purporting to be the same anonymous caller contacted the NWDD again at 6:35 am. This time, the caller said that the shooting was the result of an ongoing dispute between “Dante” and two men known to him as Charles Britten and “Beans.” According to the caller, the dispute started two weeks prior at the

playground—where an argument escalated into a shootout between the three men. The caller said no one was shot during the incident.³ The following day, “Dante” shot two males (known to the caller as “George” and “John-John”) while attempting to shoot Charles and “Beans.”

15. This caller was never identified, and the underlying basis for the caller’s knowledge was never determined.

16. PPD determined that the shooting of “George” and “John-John” referred to a prior non-fatal shooting of Kenneth Richardson (“Richardson”) and John Jones (“Jones”), which had occurred on August 16, 2010, and was investigated under DC numbers 10-39-50400 and 10-39-50402. PPD responded to the shooting and transported both Richardson and Jones to the hospital for treatment. At the hospital neither Richardson nor Jones provided a description of the perpetrator to police. Richardson gave a formal written statement, telling police that he did not know who shot him.

17. Following Wilson’s murder, PPD requested the Office of Forensic Science (“OFS”) conduct a comparison between ballistics evidence from the August 16th non-fatal shooting and August 28th death of Wilson. On September 17, 2010, OFS determined that the 9mm FCCs recovered from the August 16th crime scene matched

³ PPD determined that this incident referred to the August 15, 2010 non-fatal shooting of Stefan Wood Jr. and Stefan Wood Sr. at 2955 N. 27th street, and investigated under DC numbers 10-39-50183 and 10-39-50184. According to their police statements, the men were driving to the movies when a green van pulled up and shot at them. Contrary to the information provided by the anonymous caller, both victims were struck multiple times and received medical treatment. The Commonwealth has no knowledge that a perpetrator was identified.

the “Group A” 9mm FCCs recovered from the August 28th primary scene, indicating the same firearm was used in both shootings.

18. On October 10, 2010, Dove formally interviewed Jones. In his statement, Jones identified “Donte” and “Kizzy” as the people who shot him; and said that “Dirt” (aka Charles Britten) told him “Prada” (aka Johnathan Wilson) had been killed, and that “the streets” were saying that “Donte” killed him. Jones identified a photo of Regusters as “Donte” after reviewing photographs on the PPD computer.

19. On October 12, 2010, Nordo transported Britten to the Homicide Unit from the county jail where he was being held pretrial, stemming from an October 7, 2010 arrest for Possession with Intent to Deliver (“PWID”), which was charged at MC-51-CR-0043452-2010. At the time of his interview, Britten had multiple open cases⁴ and was ineligible to obtain a license to carry a firearm, because he was under the age of 21 and had a prior adjudication of delinquency for Possession with Intent to Deliver a controlled substance. *See* 18 Pa.C.S. § 6109.

20. Prior to the formal written interview, Nordo had a conversation with Britten that was not memorialized in writing. During that conversation Nordo discussed the facts of the case with Britten and informed Britten “that these are the following sequence of event[s] that we have out there” and in this murder investigation, it’s

⁴ See, *Commonwealth v. Britten*, CP-51-CR-0012349-2010 (PWID, arrest 5/8/2010, disposition 2/3/2011); MC-51-SU-0008356-2010 (Summary Offense, arrest 6/17/2010, disposition 1/28/2011); MC-51-CR-0029269-2010 (Possession of Marijuana, arrest 7/6/2010, disposition 11/13/2010); CP-51-CR-0013602-2010 (PWID, arrest 10/7/2010, disposition 2/3/2011).

“our belief that you have knowledge about this.”⁵ According to Nordo, Britten said he fired a .380 multiple times. Only after Britten described the shooting and implicated himself did Nordo advise him of his Miranda Rights, telling Britten “the actions that you described and the events that took place that early morning indicate that your actions are criminal.”⁶

21. Later, a formal written statement (“75-483”) was taken by Nordo and Gaines. Britten’s 75-483 contains the following statements, along with an admission that he shot a .380 caliber handgun during the incident. Britten was with “Ed” [Humphrey] in the early morning hours of August 28, 2010 when “Donte” and “Kizzy” rode down 26th Street on bikes and started shooting at Britten and Humphrey. Ducking behind a car, Britten returned three to four shots with his handgun. He identified single photos of Donta Regusters and Kyle Pelzer as “Donte” and “Kizzy,” respectively; and identified Edward Humphrey as “Ed” who was standing with him.

22. On October, 13, 2010, Nordo interviewed Humphrey. At the time, Humphrey was on state supervision, living in a drug treatment facility, stemming from a 2005 gunpoint robbery/felon in possession conviction for which he was sentenced to serve five to ten years of incarceration. He was brought to Homicide by his Parole Agent.

23. As with Britten, Nordo had an informal conversation with Humphrey at Homicide before anything was formalized in writing. During this unrecorded

⁵ See N.T. 3/28/2012 at 116 (Nordo’s trial testimony).

⁶ *Id.*

conversation, Nordo “more or less told Edward Humphrey as to why he was being brought here.”⁷ According to Nordo’s trial testimony, Humphrey was reluctant to speak to him, but was “more surprised than anything as to why we brought him down there and how we found him.”⁸

24. Humphrey ultimately gave a written statement to Nordo and Gaines, in which he identified Regusters and Pelzer as the shooters. Humphrey’s 75-483 differed from Britten’s in several respects, most significantly in that Humphrey said that three other boys were with “Donte” during the shooting. Per the statement, the two shooters were “Donte,” who was on a stunt bike, and an individual in a fatigue hat, who was on foot. Humphrey stated that he had known “Donte” for approximately three months before the shooting, but did not know the guy in the fatigue hat. Humphrey identified Regusters and Pelzer, as “Donte” and the person in the “fatigue hat” respectively, from photo arrays administered by Nordo and Gaines.

THE TRIAL

25. Regusters and Pelzer were tried jointly for the non-fatal shooting of John Jones and Kenneth Richardson, and for the death of Johnathan Wilson. Both defendants were acquitted of all charges related to the prior non-fatal shooting of Richardson and Jones.⁹

⁷ N.T. 3/28/2012 at 69 (Nordo’s trial testimony).

⁸ N.T. 3/28/2012 at 70 (Nordo’s trial testimony).

⁹ See *supra* fn 2.

26. The evidence supporting Regusters' conviction was based entirely on the out-of-court statements taken by Nordo of witnesses Britten and Humphrey, which were admitted as substantive evidence.

Charles Britten's Testimony

27. At the time of trial, Britten was deceased and therefore unavailable to testify.¹⁰ His prior preliminary hearing testimony was ruled admissible by Judge Sarmina at a hearing pursuant to *Commonwealth v. Bazemore*, 614 A.2d 684 (Pa. 1992), and read into the record at trial.

28. Prior to calling Britten as a witness at the preliminary hearing on February 9, 2011, the prosecutor conferred with Britten's attorney, and then introduced a court ordered grant of immunity, compelling Britten to testify. Britten denied having any knowledge of who killed Wilson. He testified that during the early morning hours of August 28, 2010, he was not with Humphrey near the intersection of 26th and West Silver Streets (the primary scene), but was alone and further down the block near his aunt's house.

29. When asked about his written statement, Britten testified that while he did make the statement, each answer he gave detailing the shooting of Wilson was a lie—specifically agreeing that “anywhere in this statement where [he] indicated anything about Donta being involved in the shooting” was a lie.¹¹

¹⁰ Britten was killed by Jamal Glover, who was convicted under CP-51-CR-0008060-2012. At the time of Regusters' trial, the Commonwealth conceded the killing was unrelated to this case. The CIU has not found any information to contradict that conclusion.

¹¹ N.T. 3/27/12 at 226.

30. In response to a question on direct about whether any prosecutor had promised Britten anything in exchange for his testimony, he responded that the police had made promises in return for giving a statement.¹² There was follow-up on cross-examination:

Q: Now, you made indication earlier when the District Attorney asked you if he had made any promise to you with regard to your open cases or for anything else, and you said no, he didn't, but that a detective had promised you something; is that correct?

A: Yes

Q: What did the detective promise you?

A: For my protection in the case.

Q: I'm sorry, your protection in this case?

A: Yeah, like saying – like saying because I had a gun, so he said they was going to get me out of it.

Q: So they said they wouldn't charge you for having a gun?

A: Yes

Q: And you have not been charged with carrying a gun, have you?

A: No

Q: Or shooting it for that matter?

A: No

N.T. 3/27/12 at 227-28 (emphasis added).

¹² N.T. 3/27/12 at 211. Compare with *supra* ¶40 (Nordo specifically denying making promises to Britten).

Edward Humphrey's Testimony

31. At trial, Humphrey testified that on August 28, 2010, he was in front of his home on the 2500 block of West Silver Street with two other individuals, neither of whom were Britten. Although they were not together, Humphrey recalled Wilson sitting in Wilson's car nearby on 26th Street. Around 4:00 am, Humphrey heard gunshots coming from the direction of Lehigh Avenue (the direction of the primary scene). Humphrey ran into his home at the sound of the first shot, and remained inside until the shooting stopped. Humphrey testified "I didn't see who was firing the shots. I don't know how many shooters."¹³

32. Humphrey testified that his statement implicating Regusters was false, specifically agreeing that "wherever in [his statement]...in which you indicate any reference whatsoever to Donta" is a lie and the result of coercion by police.¹⁴ He testified that he was transported from the state drug treatment facility to Homicide by two Homicide personnel and kept in a room for six hours before he was interviewed by two detectives – a black female and a white male. According to Humphrey, he was "getting interrogated and telling Homicide detectives over and over I don't know what is going on until I start getting threatened for them asking me and me staying there two or three days. I didn't get fed."¹⁵ Humphrey testified that although detectives

¹³ N.T. 3/27/12 at 93.

¹⁴ N.T. 3/27/2012 at 181. This is consistent with his preliminary hearing testimony in which he said that the statement was a "fabrication" that was "forced on him" by detectives. N.T. 2/9/2011 at 66.

¹⁵ N.T. 3/27/2012 at 172.

threatened to hold him for multiple days, he was actually only down at Homicide for “close to a day.”¹⁶

33. On direct, Humphrey testified that the Homicide detective made odd and specific promises in exchange for his statement including a promise for “a job and that they would get me out of the treatment center and all this other stuff.”¹⁷ Humphrey was immediately impeached by the Commonwealth with his written statement to Nordo, in which he denied any promises were made.¹⁸

34. Humphrey further described the promises on cross examination by counsel for the co-defendant:

Q: But at any rate you indicated to this jury under oath that you were interviewed by Homicide detectives and at some point in time they Homicidehomicide [sic] detectives promised you some things?

A: Right.

Q: What did they promise you?

A: That they were going to get me out of the program early and set me up with a security job.

Q: A security job?

A: That was the male Homicide detective officer.

Q: You have an armed robbery conviction. How are they hooking you up with a security job?

¹⁶ *Id.*

¹⁷ *Id.* at 164.

¹⁸ N.T. 3/27/12 at 166.

A: I have no idea. That is the statement that come out of his mouth.

N.T. 3/27/12 at 174-75.

35. Humphrey testified on cross that the description of “Donte” contained in his statement came from the detectives¹⁹ and that the photo he selected during the photo-array was “heavily suggested” to him by police.²⁰

36. Humphrey did not make an in-court identification of Regusters at trial.²¹

37. On direct, the prosecutor attempted to contextualize Humphrey’s testimony as part of a “no snitching code” by referencing a pre-trial meeting between himself and Humphrey. Humphrey rejected that narrative, telling the prosecutor that in the prior meeting, “I didn’t tell you that I was familiar with the code. We had a conversation that you brought up. I didn’t tell you anything about that.”²²

Nordo’s Testimony

38. The Commonwealth called Nordo to rebut Britten’s and Humphrey’s claims that Nordo had coerced them and made promises to obtain their written statements on October 12, 2010 and October 13, 2010, respectively; and to admit their out-of-

¹⁹ N.T. 3/27/12 at 187.

²⁰ *Id.* at 185. This was consistent with his preliminary hearing testimony that “they said they are not going to let me make a mistake and pick the wrong person.” N.T. 2/09/11 at 67. See also N.T. 3/27/12 at 200.

²¹ N.T. 3/27/12, 124-25. Similarly, he did not make an in-court identification at the preliminary hearing. See N.T. 2/09/11 at 66.

²² N.T. 3/27/12 at 154.

court statements as substantive evidence pursuant to the *Brady/Lively* line of cases and Pa.R.E. 803.1 (2), (3).

39. Nordo testified that he transcribed both interviews as they happened, memorializing each question and answer word for word.²³ No audio or videotape of these interviews was made. Nordo testified that both Britten and Humphrey refused consent to videotape their formal interviews, but no documentation exists supporting this assertion.²⁴

40. Contrary to Britten's testimony, Nordo specifically denied threatening or making him any promises in exchange for his statement. On direct examination, Nordo said:

Q: Did you make any threats or promises as to him giving a statement in this case?

A: No. There was no threats or promises made. No. It's not like it was indicated to him that the DA's Office was going to review this.

Q: And did you make him a promise that he would not be charged? Did you make him a promise that he wouldn't be charged in order for him to give a statement?

A: No.

N.T. 3/28/12 at 95.

41. But, on cross-examination Nordo conceded that he told Britten he could be charged with Wilson's murder, saying, "I said that is a distinct possibility that can

²³ *Id.* at 96-7.

²⁴ *Id.* at 107.

happen, sure, because I made it clear that the district attorney when reviewing this, absolutely, there is a possibility you can be charged with any crime. Any crime they deem.”²⁵

42. Nordo testified that before he *Mirandized* Britten and began the formal written 75-483, Nordo had a conversation with Britten in the 45 minutes between when Britten was documented to have arrived at the Homicide Unit, and when the 75-331 *Miranda* warnings were executed. Nordo described this conversation as a precursor to the formal interview, saying “it was basically agreed upon that what we were just talking about we’re now going to commit to paper.”²⁶

43. Nordo also specifically denied coercing Humphrey during his October 13, 2010 interview. On direct examination, Nordo stated:

Q: Did you make any threats or promises to Mr. Humphrey prior to him giving this statement?

A: Threats or promises, no.

Q: Did you tell him who to pick out when he viewed the photo spread of Donta Regustors?

A: No.

Q: Did you tell him who to pick out when he viewed the photo spread of Kyle Pelzer?

A: No.

N.T. 3/28/12 at 91.

²⁵ N.T. 3/28/12 at 114.

²⁶ *Id.* at 33.

44. The Commonwealth asked Nordo to speculate generally about why witnesses recant statements to police, without specifically inquiring about the witnesses in this case:

Q: Are you aware that witnesses “go south”, don’t cooperate when they get to court, when they have to testify in front of a jury, a courtroom, a judge in a shooting.

A: Yes, I’m aware of that.

Q: Is it fairly common?

A: Fairly common.

Q: Does it happen in almost every single shooting we do in Homicide?

A: It’s rare that it don’t happen. Let’s put it that way.

N.T. 3/28/12 at 131. Nordo testified that he is aware of the importance of documenting precisely what is said in each interview “for purposes such as this” where witnesses disavow their statements—in essence, bolstering his own character as a diligent and professional investigator.²⁷

45. On cross-examination, Nordo denied having “any personal relationship” with either Britten or Humphrey, testifying “Oh, no. I don’t know them.”²⁸

46. Gaines did not testify at trial.

²⁷ See, N.T. 3/28/12 at 132-33.

²⁸ *Id.* at 99.

PCRA PETITION AND APPLICABLE LEGAL STANDARDS OF REVIEW

The Claims

47. Petitioner filed a counseled Petition under the Post-Conviction Relief on July 16, 2021, making two legal claims related to Nordo's misconduct. Claim #1 raises a *Brady* violation, cognizable under 42 Pa.C.S. § 9543 (a)(2)(i). Claim #2 raises after-discovered-evidence, cognizable under 42 Pa.C.S. § 9543 (a)(2)(vi). On November 22, 2022, Petitioner filed an amendment, further supplementing the two legal claims based new facts from statements Humphrey gave to PCRA counsel in September 2022 and separately to CIU prosecutors in November 2022. Finally, on March 25, 2023, Petitioner filed a further supplement to the two legal claims, based on new facts from a secret grand jury investigation, which the Commonwealth was recently authorized to disclose.

Jurisdiction

48. Because this petition was filed more than one year after the Petitioner's conviction became final, he must satisfy an exception to the PCRA's timeliness requirements. 42 Pa.C.S. § 9545(b).²⁹ The Petitioner bases his claims on new facts pursuant to 42 Pa.C.S. § 9545(b)(1)(i) and government interference pursuant to 42 Pa.C.S. § 9545(b)(1)(ii). (Petition p. 41).

49. The procedural new facts exception to timeliness pursuant to 9545 (b)(1)(ii) is distinct from the substantive after-discovered evidence claim under 9543 (a)(2)(vi).

²⁹ A petitioner must also establish, as Regusters has, that he is serving a sentence, and the claim based on these facts has not previously been litigated.

Commonwealth v. Brown, 111 A.3d 171, 176-77 (Pa. Super. 2015); *see also Commonwealth v. Bennett*, 593 Pa. 382, 393 (2007) (recognizing a previously employed misnomer). The jurisdictional question under the new facts exception does not require a merits analysis of the underlying after-discovered-evidence claim. *Id.* *see also Commonwealth v. Lambert*, 884 A.2d 848, 852 (Pa. 2005) (new facts exception satisfied as timely PCRA claim, where *Brady*'s materiality standard not satisfied).

50. Any petition invoking the new facts exception or the government interference exception shall be filed within one year of the date the claim could have been presented. 42 Pa.C.S. § 9545(b)(2).

Due Process – Brady v. Maryland

51. The Commonwealth has an obligation to disclose to the defense information that is favorable to the guilt or punishment of the defendant. *Brady v. Maryland*, 373 U.S. 83 (1963). This obligation requires that the Commonwealth disclose information that is exculpatory as well as impeaching. *Smith v. Cain*, 565 U.S. 73 (2012). This obligation extends to information possessed by law enforcement in the same jurisdiction as the prosecutors. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995).

52. A new trial is required where the evidence that the Commonwealth failed to disclose is material, *i.e.*, when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. *Cone v. Bell*, 556 U.S. 449, 470 (2009). “A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.” *United States v. Bagley*, 473 U.S. 667, 682 (1985). Importantly, “[t]he question is not whether the defendant would more likely

than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Kyles*, 514 U.S. at 434. The materiality of the undisclosed evidence is evaluated cumulatively, rather than item by item. *Id.* at 436 (the materiality of the suppressed evidence must be “considered collectively, not item by item.”).

After-Discovered Evidence

53. To obtain relief on a substantive after-discovered-evidence claim under the PCRA, a petitioner must demonstrate: (1) the evidence has been discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict. *See, e.g., Commonwealth v. Washington*, 592 Pa. 698, 927 A.2d 586 (2007).

CIU REVIEW, INVESTIGATION, AND ARGUMENT

54. Nordo was arrested on February 19, 2019, pursuant to Presentment Number VII of the Twenty-Ninth Investigating Grand Jury. The CIU supplemented a *Giglio* packet³⁰ with a redacted copy of Presentment VII. Given the nature of this serious police misconduct and the awareness that criminal investigative information was protected by grand jury secrecy, the Law Division of the District Attorney’s Office requested that the CIU conduct a review of all criminal convictions in which Nordo was involved in the investigation. To facilitate this Nordo-claim review, any PCRA

³⁰ This packet has been updated multiple times since.

petition alleging Nordo-related misconduct or any active PCRA petition where the PCRA review identified any level of Nordo involvement is internally referred to the CIU to determine whether there is sufficient reason to conclude that Nordo's involvement in the investigation undermines confidence in the verdict, entitling the defendant to a new trial.

*In 2019, Attorney Brown Claims to Represent Regusters, But Fails to File a
PCRA Petition*

55. On May 23, 2019, Attorney Jerome M. Brown, Esq. (“Attorney Brown”) sent an email to the prior Supervisor of the CIU, identifying five criminal cases in a “list of clients, who have cases where Detective Nordo was actively involved...” and requested the “packet” as soon as possible. One of the listed cases was this matter, identified by name and CP number.³¹

56. On August 27, 2019, Attorney Brown sent the CIU a letter identifying himself as counsel for Donta Regusters, submitting the Petitioner's case (CP-51-CR-0001677-2011) for CIU review, and asking the CIU to prioritize the Petitioner's case. Attorney Brown's letter primarily discussed former-Detective Dove. However, one sentence referred to Nordo—“[t]his story involves both Detectives Nordo and Dove, and probably the worst of both”—without saying Nordo had been arrested or describing

³¹ Another case was *Commonwealth v. Ronald Thomas*, which was then on appeal to the Superior Court at 2898 EDA 2018, and where Attorney Brown had already filed an Application for remand on April 22, 2019, to litigate claims related to Nordo.

the facts alleged in the charging documents. The letter lists “Donta Regusters” on the CC line, below Attorney Brown’s signature.³²

57. Despite Attorney Brown’s knowledge of some new facts that would support a claim, Attorney Brown did not file a PCRA petition.

58. The CIU did not prioritize Regusters’s case. Factors that led CIU not to prioritize the case included the fact that Attorney Brown made only a generalized reference to Nordo, and did not file a PCRA petition.³³

59. If a general claim of Nordo’s misconduct based on the Presentment had been timely pled by Attorney Brown, the Commonwealth would likely have recommended relief because the Commonwealth believes Regusters received a constitutionally deficient trial. See ¶¶ 91-95, 97 *infra*. However, Attorney Brown did not file a timely PCRA petition. Therefore, as explained in ¶¶ 60-62, a general claim of Nordo’s misconduct based on the presentment—on its own—requires a hearing to determine whether the procedural timeliness requirements of the PCRA are met.

60. On July 16, 2021, Attorney Craig Cooley, Esq. entered his appearance and filed a PCRA petition for Regusters. In his petition, Regusters avers that he did not learn

³² The Commonwealth has no knowledge of whether the defendant received a copy of Attorney Brown’s letter. However, the CIU believes Attorney Cooley first learned of the letter on May 11, 2023, when the CIU informed Attorney Cooley of the letter, and provided him a copy.

³³ As of this filing, the CIU has reviewed eighty-two Nordo-claim cases: six cases resulted in PCRA relief and dismissal of charges; three cases resulted in PCRA relief with negotiated guilty pleas; two cases have resulted in granting a new trial in which the defendant is pending retrial, and sixty-six cases have been declined (a declination is not a CIU conclusion that the conviction is sound or that there is no basis for overturning it. Rather, a declination simply means that a general claim of Nordo misconduct, if it exists at all in the case, does not by itself warrant relief); one case was closed following the petitioner’s death; and one codefendant case was referred to the Office of the Attorney General. The CIU has argued two codefendants are entitled to a new trial, with a decision of the court pending. Finally, fourteen cases are currently under active CIU review.

of Nordo's misconduct or pending criminal charges until September 29, 2020, when he was informed of such by then newly-retained Attorney Cooley. Regusters claims he was not aware that Nordo had been fired, or of Nordo's 2019 arrest prior to that conversation.

61. Because the so-called public record presumption has been abrogated, *see Commonwealth v. Burton*, 638 Pa. 687 (2017); *Commonwealth v. Small*, 662 Pa. 309 (2020), it does not defeat Regusters' claim that he first learned about Nordo's misconduct in September 2020.

62. However, the allegations pled in Regusters' PCRA conflict with the actions of Attorney Brown described above. This presents a genuine issue of material fact that entitles Regusters to a hearing in this Court to resolve.³⁴

63. However, as explained below, Regusters' most recent amendments satisfy the timeliness requirements, and the Commonwealth therefore asks this Court to grant PCRA relief on that basis.

PCRA Petition Filed by Attorney Cooley is Referred to the CIU and Results in Disclosure of A.W. Information

64. Regusters' PCRA petition was internally referred to the CIU as part of the Nordo-claim review requested by the Law Division. On December 15, 2021, the CIU

³⁴ During a review of the merits of this case, the Commonwealth also reviewed the procedural issues including the issue described above. On May 10, 2023, the Commonwealth provided Attorney Cooley a copy of the letter sent by Attorney Brown. Attorney Cooley indicated that he was unaware of Attorney Brown's actions. Later, after conferring with his client, Attorney Cooley informed the Commonwealth that Attorney Brown had not been retained by Regusters to represent him.

entered into a discovery agreement with Attorney Cooley, and subsequently provided extrajudicial discovery, which included open access to the prosecution and police file.

65. On November 2, 2022, CIU prosecutors interviewed Edward Humphrey about the murder of Johnathan Wilson. What he told the CIU was largely consistent with his trial testimony. Humphrey also described being taken to Homicide, where he was interviewed by a black female and a white male. Humphrey stated that while in the interrogation room, he was mostly alone with the male detective, who threatened to “max out” Humphrey’s probation, and also promised him a security job and witness protection for his cooperation.

66. Humphrey died on February 20, 2023.³⁵

67. In May 2023, based on the unique facts of this case, the Commonwealth determined that additional disclosures of information were required. The Commonwealth applied to the Supervising Judge of the Thirtieth Investigating Grand Jury to disclose information from the grand jury investigation, specifically the notes of testimony of AW’s grand jury testimony (“AW-information”). After a disclosure order was granted, that information was provided to the defense on May 16, 2023.

68. The AW-information concerns Nordo sexually exploiting AW, and Nordo’s related acts of making promises to AW to help AW with his open cases and submit AW for crime reward money, and most significantly to this case, offering AW employment working in security.

³⁵ The Office of the Medical Examiner classified the death as an accident caused by drug intoxication.

69. The information about Nordo’s acts towards AW satisfies both the new facts and government interference exceptions to the PCRA. This Court therefore has jurisdiction to address the underlying legal claims—*Brady* and After Discovered Evidence—predicated upon those facts.

Timely Filed A.W. Information Constitutes Brady Material and Forms a Nexus Between Nordo’s Misconduct and Regusters’ Criminal Conviction

70. The new facts from the A.W.-information that give rise to this *Brady*-claim must be assessed collectively with the other information regarding Nordo’s misconduct that was suppressed. *See Kyles v. Whitley*, 514 U.S. 419, 436 (1995) (suppressed information is “considered collectively, not item by item”); *Dennis v. Penn. Dept. Corr.*, 834 F.3d 263, 311-12 (3d Cir. 2016) (en banc) (same); *but see Commonwealth v. Natividad*, 650 Pa. 328, 370 n. 18 (2019) (finding *Dennis*’s discussion of *Kyles* is not binding authority on Pennsylvania courts but nonetheless employing an analysis that is “mindful of those pointed criticisms” by the *Dennis* court), *conditional writ of habeas corpus subsequently granted, Natividad v. Beard*, 2021 WL 3737201 (E.D. Pa. 2021).

71. At bottom, the decision in *Brady* is not a discovery rule, but rather a rule of fundamental fairness. *Brady*, 373 U.S. at 87 (grounding *Brady* in due process). The Commonwealth’s approach here is consistent with the Supreme Court’s observation that *Brady* claims are “legally simple but factually complex.” *Turner v. U.S.*, 582 U.S. 313, 324-25 (2017). Therefore we “examine the *trial record*, evaluate the withheld evidence in the context of the *entire record*, and determine in light of that examination whether there is a reasonable probability that, had the evidence been disclosed, the

result of the proceeding would have been different.” *Id.* at 324-25 (internal citations omitted, emphasis added).

72. The Commonwealth begins its *Brady/Giglio* analysis with the entire record of suppressed information, not just the new facts that establishes jurisdiction for the claim. It is impossible to understand the nature and character of Nordo’s promise to help Humphrey get a job in “security” without the context of how Nordo employed such offers of benefits as part of his broader misconduct in grooming his victims to be sexually assaulted. Both the substance of the suppressed information and the timing of when the Commonwealth had knowledge or constructive knowledge are important to the *Brady/Giglio* analysis.

73. On February 19, 2019 former-Homicide Detective Philip Nordo was arrested and ordered to be held without bail. He was charged pursuant to Presentment Number VII of the Twenty-Ninth County Investigating Grand Jury, which recommended criminal proceedings against Nordo for offenses against individuals identified as Complainant #1, Complainant #2, and Complainant #3; and for offenses against the City of Philadelphia, as well as other acts evidence. On March 30, 2021, Nordo was charged with offenses against an additional victim, pursuant to Presentment Number VIII of the Thirtieth County Investigating Grand Jury. Those matters were joined for a jury trial. AW was not described in either Presentment as complainant or other act victim.

74. On June 1, 2022, after a two-week jury trial, Nordo was found guilty of multiple counts of rape, official oppression, obstruction, theft by deception, securing execution

of documents by deception, and related offenses. Nordo met all his victims while in his official capacity as a homicide detective and committed one indecent assault crime inside the Police Administration Building.

75. The theft count related to Nordo providing fraudulent information in a memorandum requesting that the City of Philadelphia disburse \$20,000 of Crime Reward money to one of his victims. This victim should not have received these funds, as the crime reward submission related to the investigation of the murder of a police officer, which Nordo's victim played no role in solving.

76. The earliest criminal act alleged in the information occurred as a course of conduct between January 1, 2003 and December 31, 2017.³⁶ The earliest other act alleged in the information occurred on April 9, 2005, inside an interrogation room at the East Detective Division.

77. The Commonwealth had actual knowledge of Nordo's April 9, 2005 incident/other act at least as early as May 13, 2005. The Commonwealth was prohibited from introducing evidence of this other act at Nordo's trial, because it was ruled too prejudicial under Rule 404 (b). However, evidence that Nordo committed a crime of sexual violence towards a suspect inside an interrogation room of East Detective Division was admitted at sentencing, and considered by Judge Campbell before Nordo was sentenced to an aggregate term of 24 ½ to 49 years of incarceration.

³⁶ These charges did not proceed to the jury because the witness was unavailable.

AW's Grand Jury Testimony

78. The notes of testimony of AW's September 12, 2019 testimony were passed as discovery in this matter on May 16, 2023. Prior to that, they were subject to grand jury secrecy.

79. The information in AW's testimony establishes a nexus between Nordo's misconduct generally, and the facts of this case specifically.

80. In 2017, the Philadelphia Police Department, Internal Affairs, Investigative Support Services ("ISS") opened an investigation into Philip Nordo, under IAD #17-1516. Sergeant Richard Jones, now-retired, was assigned. As part of a preliminary investigation, Sgt. Jones received information from another law enforcement agency describing the names of several individuals who might have pertinent information. One of those names was AW. The DAO, in consultation with its ISS partners prioritized the investigation, which resulted in Nordo's arrest on February 19, 2019.

81. The Commonwealth continued to investigate, including the names received in 2017. On September 12, 2019, AW appeared before the Thirtieth County Investigating Grand Jury and testified. AW's testimony establishes that he first met Nordo on December 3, 2013 when the Homicide Unit sought assistance to solve a high-profile murder that occurred in an attempted robbery of a pair of Beats headphones.³⁷ During his first conversation with Nordo, Nordo informed AW that "if I help him with the homicide that he was going to be able to – going to be a reward

³⁷ N.T. 9/12/2019 at 6.

out for the person they found for the beats headphones”³⁸ After that meeting AW continued providing information to Nordo, and communicated with him despite being incarcerated on his own criminal matters.

82. During his testimony, AW described being sexually exploited by Nordo. In recorded calls, Nordo spoke in coded language about having AW work for him in a porn job. Telephone calls also recorded Nordo discussing, in coded language, his promise to obtain \$20,000 of crime reward money that AW was not entitled to,³⁹ and admonished AW for discussing it on the recorded call.⁴⁰

83. In addition, AW testified that after Nordo helped him get out of jail on his probation violation, he met him at multiple locations where Nordo sexually assaulted him. Those meeting were subsequently corroborated with other evidence.

84. AW testified that in addition to the coded discussion of working a job in porn, Nordo promised to help AW get a job working “for his security company.” (The Commonwealth’s criminal investigation revealed that Nordo had a business relationship with a company called the Miller Detective Agency, Inc.).

³⁸ *Id.* at 7.

³⁹ Nordo claimed that AW had identified a suspect in a murder investigation from looking at surveillance video. However, because of the poor quality of the video, and a utility line obstructing the camera’s view of the perpetrator’s face, it was impossible for AW to have identified the perpetrator from looking at the video.

⁴⁰ These calls were admitted at Nordo’s trial as Rule 404 (b) evidence to prove Nordo’s criminal intent, in an unrelated scheme in which Nordo fraudulently secure \$20,000 of crime reward money to be paid as essentially hush-money to a rape victim.

85. The promise occurred sometime between December 3, 2013 (when AW met Nordo) and February 18, 2015 (the date of a recorded phone call). When AW was asked about his reaction to Nordo offering him jobs, AW testified:

I kind of -- I was mad. And then I was like where did that come from? I said I would do the security job, but I said how could I do it if I have a criminal record? And he was saying that it was his business and how he was able to, like, do whatever he wanted, and all that stuff, and I would have been fine. But I never got the job.

N.T. 9/12/2019 at 21.

86. Nordo's *modus operandi* involved grooming his victims to be sexually assaulted by progressing the relationship from work-related conversations, to personal matters, to offering benefits, and to testing the subject's limits by engaging in inappropriate and sexually inappropriate conversations and touching. For some individuals, this grooming culminated in sexual assault. By testing-the-limits of his prospective victims, Nordo assessed their reaction, and their ultimate vulnerabilities to his planned assaults. Given that background, the Commonwealth believes that the promise to get AW a job working in security likely occurred closer to the beginning of their relationship, as it would be consistent with Nordo's efforts to test the limits of establishing an inappropriate relationship with AW.⁴¹ However, it is impossible to determine the exact date this promise was made.⁴²

⁴¹ This is based on the Commonwealth's investigation into Nordo's other sexual assaults, and consultation with an expert witness qualified to explain the dynamics of sexual violence. As to the similarities establishing a *Modus Operandi*, the Commonwealth notes that Nordo's trial court granted joinder of multiple victims' cases, and denied the defendant's severance motion.

⁴² The Commonwealth has not determined the exact timeline of Nordo's interactions with AW.

87. Given the above, the Commonwealth had actual knowledge of Nordo's misconduct at the time of Regusters' trial in April 2012, and had constructive knowledge of Nordo's grooming and manipulation of AW as early as December 3, 2013, during the pendency of Regusters' direct appeal.

88. The Commonwealth does not have reason to believe the trial prosecutor was personally aware of Nordo's misconduct, but that is irrelevant for *Brady* purposes. See *Kyles*, 514 U.S., at 433; *Giglio v. U.S.*, 405 U.S. 150 (1972). What matters is that this information was not disclosed to Regusters.

89. “[A] prosecutor’s *Brady* obligations remain in full effect on direct appeal because the defendant’s conviction has not yet become final, and his right to due process continues to demand judicial fairness.” *Goodwin v. Wetzel, et al*, No. 18-cv-5269, 2022 WL 2759047 at *22-23 (E.D. Pa. June 15, 2022) (cleaned up and quoting *Fields v. Wharrie*, 672 F.3d 505, 515 (7th Cir. 2012)).

Nordo's Misconduct and Security-Job Promises to Dwayne Handy

90. AW was not the only other person who testified about Nordo promising jobs in security. *Commonwealth v. Dwayne Handy*, CP-51-CR-0013034-2011 is instructive.⁴³

However, it is clear from documentary evidence, Nordo first met AW on December 3, 2013 (three days after the murder of Christian Massey). The promise regarding the job working in security occurred earlier than when Nordo sexually assaulted AW, which was determined by subsequent investigation of documentary evidence to have occurred on November 26, 2014. However, given AW's overall description of his relationship with Nordo, and Nordo's grooming efforts towards this and other victims, this offer of as security job, likely occurred much closer to their initial meeting on December 3, 2013 than the sexual assault on November 26, 2014.

⁴³ The DAO referred the PCRA in *Commonwealth v. Dwayne Handy* to the Office of the Attorney General. The Commonwealth, represented by the OAG, first opposed an evidentiary hearing arguing that “the petition should be denied without a hearing because all cognizable claims are without legal merit even if all factual allegations are treated as true”; opposed PCRA Discovery; vigorously contested

In that case, defendant Dwayne Handy testified at a June 17, 2021 PCRA hearing that he met Nordo for the first time during an interrogation, Nordo was “continuously” asking him questions about oral sex, private parts, masturbation, sexual questions about his cellie, and questions about doing gay porn. Handy also testified that during the same interrogation, Nordo said, “he had security, like security hook-up, like a friend who had a security company that had other jobs whereas though he can help me get a regular job or whatever the case maybe.”⁴⁴ Handy testified he signed a statement and Nordo let him leave, slipping a paper with his phone number into his pocket.⁴⁵ Nordo took Handy’s statement on April 9, 2011, a year before Regusters’ trial.⁴⁶

evidence admitted at a hearing; and following the hearing, opposed a new trial. After all that, Judge DeFino-Nastasi ordered a new trial, and went a step further, *sua sponte* suppressing Handy’s confession from evidence at retrial. No appeal was taken.

During that litigation the Commonwealth was represented by Deputy Attorney General Hugh Burns, Senior Deputy Attorney General Cari Mahler, and Chief Deputy Attorney General: Gun Violence Section Brendan O’Malley.

Handy was represented by Attorney Brown.

⁴⁴ *Commonwealth v. Handy*, 6/17/2021 PCRA Transcript, 3, 18.

⁴⁵ This was corroborated by testimony from Handy’s prior defense attorneys, who recounted prior consistent statements. The PCRA Court also accepted physical evidence, in the form of a hoodie containing a piece of paper with Nordo’s personal phone number written on it, which the defense attorney had stored as evidence since shortly after Handy’s arrest.

⁴⁶ In that statement, Handy refers to an individual who would become his co-defendant. That person has the same first name as AW. They are not the same person.

The Petitioner is Entitled to a New Trial

91. The witness statements obtained by Nordo served as the lynchpin in Regusters' conviction. At trial, the Commonwealth relied entirely upon the recanted, out-of-court statements of Britten and Humphrey to prove its case. In response to a sufficiency of the evidence claim on direct appeal, the Court discussed only the out-of-court statements in its 1925 (a) Opinion.⁴⁷ The Superior Court adopted that analysis, and affirmed.⁴⁸

92. Nordo's testimony was central to the prerequisite admissibility requirements of those out-of-court statements. *See Brady/Lively*, Pa.R.E. 803.1 (2), (3). Britten and Humphrey each testified that they were compelled to sign their 75-483s, while Nordo testified that he did not make promises, or coerce either into giving their statements.

93. As a result, the jury was left to judge the credibility of Britten and Humphrey against the credibility of Nordo.

94. In support of Nordo's credibility was Nordo's own testimony that in his experience, it is "rare" that witnesses do not recant in a shooting trial, and therefore he is habitually professional and diligent in recording written 75-483s exactly as they occurred, as he testified he did in this case. Notably, Gaines did not testify at trial to corroborate or refute this assertion, or discuss what happened during the questioning that was not memorialized in writing.

⁴⁷ Trial Court Opinion, Feb. 8, 2013, at 5-8.

⁴⁸ Superior Court Memorandum, No. 3113 EDA 2012 (11/13/2013), at 5-6.

95. By contrast, there was no evidence admitted that tended to show that Britten and Humphrey’s testimony that Nordo made unprofessional promises to witnesses and suspects was true. The Commonwealth presented a case that Humphrey’s testimony about Nordo was incredible. On direct, the prosecutor suggested that Humphrey’s testimony that Nordo promised to secure his early release from the treatment facility where he was committed was incredible, because no such benefit occurred. Additionally, his testimony that Nordo promised him a security job was the subject of questioning that suggested the claim was incredible, because he was a felon and therefore unlikely to be employable as a security guard.

96. The AW-information would have served as affirmative evidence to establish Nordo promised benefits to individuals he interviewed, and in particular made strange promises like offers of employment in security jobs.⁴⁹ This evidence would make the evidentiary prerequisites for Rule 803.1 less likely. *See* Justice Manual, 9-5.001 (C)(3) (policy of U.S. Government to disclose information that “might have a significant bearing on the admissibility of prosecution evidence”). Finally, it would have given the jury reasons to believe the witnesses’ trial testimony, and not their out-of-court statements.

97. Finally, the evidence of Nordo’s misconduct at issue here would have enabled a competent defense attorney to attack Nordo’s credibility, and impeach the course of

⁴⁹ This is relevant evidence under Rule 401 that is not otherwise inadmissible. A Rule 404 (b) is not applicable because that rule only applies to limit the Commonwealth from introducing relevant evidence of the defendant’s guilt, because the probative value of that type of evidence is presumptively too unfairly prejudicial. It is similarly not so-called reverse-404 (b) evidence, because it does not seek to prove a third-party committed a particular act because of their behavior in other circumstances.

the investigation. *See, Kyles*, 514 U.S.; *Dennis v. Penn. Dept. Corr.*, 834 F.3d 263, (3d Cir. 2016). *See also Wearry v. Cain*, 136 S. Ct. at 1006–07 (suppressed impeachment evidence was material where it would have undermined the testimony of key prosecution witness); *cf. Fraternal Order of Police Lodge No. 5 v. City of Philadelphia*, 267 A.3d 531, 556 (Comm. Ct. 2021) (Information regarding a PPD employee’s misconduct may be material “because such an accusation goes to the heart of a PPD employee’s trustworthiness and speaks to whether they have conducted themselves with fidelity and honor in fulfilling the inherently weighty duties of their job.”).

98. The Commonwealth’s suppression of Nordo’s history of misconduct and most significantly, the specific promises he made to AW, establish a nexus to this case which undermines confidence in the verdict, thereby entitling the Petitioner to relief on his *Brady/Giglio* claim.

99. Additionally, and separately, when analyzing the same new facts—the AW information—under the after-discovered evidence standard, Regusters is entitled to a new trial. If the fact finders had been presented with the information about Nordo’s misconduct, and the substantive evidence of the AW-information, there is a reasonable probability a different verdict would have been reached.

100. *Handy* is persuasive to the Commonwealth. In *Handy*, Judge DeFino-Nastasi made findings of fact before granting Defendant Handy a new trial based on after-discovered evidence. Handy was interrogated by Nordo before ultimately providing a confession that was the product of Nordo’s coercive interrogation. Judge DeFino-Nastasi granted a new trial, because, Nordo’s misconduct along with the defendant’s

testimony (supported by corroborating prior consistent statements to his defense attorneys, which were further corroborated with physical evidence) established a nexus between the misconduct and the trial. The court ruled the defendant's confession would have been inadmissible. That court was expressly "not concerned with the issue of whether the substance of the confession is true" because as the court explained "we cannot get confessions this way."⁵⁰ The *Handy*-court also found that Nordo's misconduct was not merely corroborative or cumulative, since there was no evidence of Nordo's misconduct presented to the Court.⁵¹ The Commonwealth also takes into account the Office of the Attorney General's decision not to appeal Judge DeFino-Nastasi's decision—shielding the merits-based loss from appellate review.

101. Put simply, Nordo's misconduct would have undercut the admissibility of Britten and Humphreys' out of court statements, and/or if admitted would have cast a substantial doubt about their truth, such that would likely have compelled the jury to reach a different verdict.

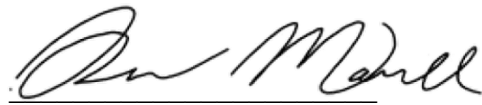
CONCLUSION

Wherefore, for the foregoing reasons, this Court should grant the defendant's petition for a new trial.

⁵⁰ *Handy*, 5/6/2022 PCRA Hearing Transcript, 141, 156-75.

⁵¹ *Id.* at 140.

RESPECTFULLY SUBMITTED:



REBECCA MCDONALD
Assistant District Attorney
Conviction Integrity Unit

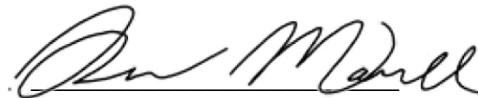


MICHAEL GARMISA
Assistant District Attorney
Supervisor, Conviction Integrity Unit
Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107

Dated: June 29, 2023

VERIFICATION

The facts above set forth are true and correct to the best of the undersigned knowledge, information and belief. I understand the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

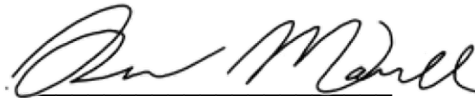
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REBECCA MCDONALD
Assistant District Attorney
Conviction Integrity Unit

Dated: June 29, 2023

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Cases Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

A handwritten signature in black ink, appearing to read "Rebecca McDonald", written over a horizontal line.

REBECCA MCDONALD
Assistant District Attorney
Conviction Integrity Unit

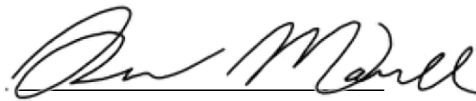
Dated: June 29, 2023

CERTIFICATE OF SERVICE

I, Rebecca McDonald, Assistant District Attorney, hereby certify that a true and correct copy of the foregoing Commonwealth's Answer to Amended Post-Conviction Relief Act Petition was served on June 29, 2023 to the parties indicated below via EFile and email:

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REBECCA MCDONALD
Assistant District Attorney
Conviction Integrity Unit

Dated: June 29, 2023